STATE OF MICHIGAN
SUPREME COURT

NL VENTURES VI FARMINGTON, LLC,

Appellant-Plaintiff,

v

CITY OF LIVONIA,
A Municipal Corporation,

Appellee-Defendant.
_____/

Michigan Supreme Court: 153110
Court of Appeals.: 323144
Lower Court: 13-004863-CZ

APPELLEE-DEFENDANT'S BRIEF IN OPPOSITION TO APPELLANT-PLAINTIFF'S APPLICATION FOR LEAVE TO APPEAL

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The Court of Appeals says	"Yes."
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STATEMENT OF STANDARD OF REVIEW

Questions of statutory interpretation are reviewed de novo. *Omelenchuk v City of Warren*, 466 Mich 524, 527; 647 NW2d 493 (2002), overruled in part on other grounds *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004). A trial court's decision on a motion for summary disposition is also reviewed de novo. *Fingerle v City of Ann Arbor*, 308 Mich App 318, 343; 863 NW2d 698 (2014).

> When reviewing a motion under MCR 2.116(C)(7), a reviewing court must consider all affidavits, pleadings, and other documentary evidence submitted by the parties and construe the pleadings and evidence in favor of the nonmoving party. To overcome a motion brought under MCR 2.116(C)(7), the plaintiff must allege facts warranting the application of an exception to governmental immunity. If no facts are in dispute, or if reasonable minds could not differ regarding the legal effect of the facts, the question whether the claim is barred by governmental immunity is an issue of law. [*Id.* (citations and quotation marks omitted).]

"A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery." *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001). "When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party." *Ernsting v Ave Maria College*, 274 Mich App 506, 509-510; 736 NW2d 574 (2007). All reasonable inferences are to be construed in favor of the nonmoving party. *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211 (2010). "Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law."

Ernsting, 274 Mich App at 509. "This Court is liberal in finding genuine issues of material fact." *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008). "A genuine issue of material fact exists when the record, giving the benefit of any reasonable doubt to the opposing party, leaves open an issue on which reasonable minds could differ." *Ernsting*, 274 Mich App at 510.

INTRODUCTION

As the Court of Appeals discovered, this is really a simple case. Two separate and independent statutes each impose a separate and independent lien for water/sewer service charges on Appellant-Plaintiff's real property. Each statute goes to considerable lengths to render its lien bullet-proof, but each also gives a landlord like Appellant-Plaintiff a procedure for avoiding the lien. Appellant-Plaintiff did not use either procedure. So the statutes say the land is liened.

These liens are very important because, among other things, they protect two classes of innocent third parties: Holders of water/sewer bonds, and the other ratepayers of the water/sewer system. MCL 141.118 prohibits free water service in order to assure a) the financial strength of the system, and b) that each user of the system pulls his/her/its own weight in paying system costs. This is critical because MCL 141.121 requires that ratepayers pay all costs of the system.

Of course Appellant-Plaintiff wants to retain its real estate without paying off the water/sewer liens, so it has become very industrious in dreaming up potential loopholes through which it might escape payment. This has necessitated even greater industry in responding to Appellant-Plaintiff; even the Court of Appeals' learned and lengthy opinion touches on only a few of Appellant-Plaintiff's many, many errors. But it all boils down to this: Given the laws governing water/sewer systems, if Appellant-Plaintiff does find a loophole, it will simply mean that other ratepayers will have to pick up the slack. So if Appellant-Plaintiff wins, everybody else loses.

STATEMENT OF MATERIAL FACTS

A. Critical Facts Highlighted by the Court of Appeals

Appellant-Plaintiff complains, in its Application for Leave to Appeal ("Application") at 4, that the Court of Appeals said the factual history of this case is not disputed, but "did not actually identify . . . those undisputed facts[.]" *Id.* But besides the most obvious undisputed facts, such as Appellant-Plaintiff's ownership of property served by the water/sewer system of Appellee-Defendant (hereafter "City" or "Livonia"), the Court of Appeals cut through the clutter and identified all the undisputed facts necessary to decide this case.

The first such fact is that by operation of the law

> Notice of the existence of such a [water/sewer] lien was constructive in accordance with MCL 123.164 and did not require actual notice by defendant to plaintiff for the lien to be valid.

NL Ventures VI Farmington, LLC v City of Livonia, ___ Mich App ___; ___ NW2d ___; 216 Mich App LEXIS 185 at 18.[1]

The Court also observed that

> In this instance, MCL 123.162 provided for the immediate effectuation of a lien for any water charges incurred on Plaintiff's property.

NL, supra, at 17-18. Thus there was no requirement that Livonia do anything to "perfect" the liens other than simply provide water to the property. Water liens are, in effect, perfected *ab initio*.

[1] This fact by itself defeats Appellant-Plaintiff's claims, as every single count of the Complaint - Exhibit A hereto - is premised on Appellant-Plaintiff's purported ignorance of Awrey's water bill delinquency. At 33 of the Application, for example, Appellant-Plaintiff actually claims that Livonia unjustly enriched itself by "keeping [Appellant-]Plaintiff ignorant of Awrey's delinquency[.]" But if one accepts, as MCL 123.164 says one must, that Appellant-Plaintiff had notice of the "official records of the . . . municipality having charge of the water distribution system[,]" Appellant-Plaintiff's ignorance is a legal nullity and there is no way Appellant-Plaintiff could be harmed by Livonia's purported violation of its ordinance or any of the City's supposedly secret scheming described so luridly in Appellant-Plaintiff's purple prose. See, e.g., Application at 4-9, 18, 33-36.

Further along in its analysis, the Court of Appeals noted

> It is undisputed that Plaintiff did not provide an affidavit in accordance with MCL 123.165 or provide notice as required in MCL 141.121(3).

NL, supra, at 21-22. This meant, of course, that Appellant-Plaintiff failed to avail itself of its sole remedy for the water/sewer liens.

Having found, amid the torrent of representations and misrepresentations in the pleadings, the three indisputable facts necessary to derail Appellant-Plaintiff's direct attack on the water/sewer liens, the Court of Appeals turned to Appellant-Plaintiff's equitable theories. First came Appellant-Plaintiff's "cursory"[2] estoppel/waiver claim. In this connection, the Court of Appeals detected a deficiency.

> Plaintiff's claim is deficient as it lacks any assertion or evidence that defendant made any representation to Plaintiff [regarding the Subordination Agreement[3]]. Any representations made were to Awrey and Cole Taylor Bank, entities that are not parties to this case.

NL, supra, at 24[4]. From this fact, the Court of Appeals concluded that

> plaintiff's assertions of estoppel or waiver do not comprise viable claims.

Id. Likewise, with respect to Appellant-Plaintiff's unjust enrichment/quantum meruit claim, the Court of Appeals discerned a fatal defect:

> Plaintiff has failed to demonstrate that defendant received a benefit through plaintiff from the subordination agreement. Any potential benefit received by defendant was through Awrey, not plaintiff.

NL, supra, at 24-25.

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[2] See *NL, supra*, at 23.

[3] Attached hereto as Exhibit B. Then-Treasurer Dennis Wright signed for the City. Exhibit B at 10.

[4] The larger reasons for the Subordination Agreement's utter irrelevance to the subject water/sewer liens are discussed *infra*, at 6-8. Here, and throughout its opinion, the Court of Appeals addressed only facts which were essential in determining the outcome.

Lastly, considering Appellant-Plaintiff's tort claims and Livonia's immunity therefrom, the Court of Appeals recognized that

> It cannot reasonably be asserted that defendant's operation of a municipal water supply did not constitute a governmental function. It is routinely acknowledged that "[t]he operation of a municipal water supply system is a governmental function[.]"

NL, supra, at 28, quoting *Citizens Ins Co v Bloomfield Twp*, 209 Mich App 484, 487; 532 NW2d 183 (1994), citing MCL 41.331 *et seq.* and MCL 41.411 *et seq.*[5]

B. Appellant-Plaintiff's Lease with Awrey

Appellant-Plaintiff is a Delaware limited liability company and was the landlord under a Lease Agreement Appellant-Plaintiff provided to the circuit court,[6] thus making the Lease part of the record in this case.[7]

The Lease, dated April 10th, 2008, gave Awrey Bakeries LLC the right to use Plaintiff's property at 12301 Farmington Road in Livonia for a basic annual rent ranging from $950,000 in

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[5] Appellant-Plaintiff is undoubtedly correct that the Court of Appeals *could* have identified more undisputed facts in this case, and could even have gathered them under a heading like "Statement of Undisputed Facts" for the reader's convenience. Indeed, additional undisputed facts are discussed, *infra*, at 4-8, in order to help this Court cut through some of Appellant-Plaintiff's more extravagant claims. This does *not* mean – as Appellant-Plaintiff asserts in the Application at 4 – that Appellant-Plaintiff's entire vividly colored narrative constitutes "undisputed facts . . . which can no longer be disputed by [Livonia]." Instead, it means that quibbles over such facts are beside the point because

> factual differences must be of legal significance[,]

Does v Dep't of Corr., unpublished opinion of the Court of Appeals, Nos. 321013, 321756, (August 25, 2015) at 30; 2015 Mich. App. LEXIS 1644, citing *United States v Stauffer Chem Co*, 464 U.S. 165, 172; 104 S Ct 575; 78 L Ed 2d 388 (1984), and the factual disputes Appellant-Plaintiff puts forward have no legal significance.

[6] The Lease, which – together with its three amendments – was Exhibit 1 to the Affidavit of Michael J. Baucus, which itself is Exhibit 4 to the Application and is attached hereto as Exhibit C.

[7] As has been seen, it is undisputed that, prior to the inception of this litigation, Plaintiff did not provide either the Lease or any pertinent portion thereof to Livonia.

the first year to $1,748,350 in 2037-2038.[8] In the Lease, Appellant-Plaintiff, along with Awrey, acknowledged being sophisticated and experienced in real estate transactions.[9]

But it is the Amendments to the Lease[10] which provide the most useful background for Appellant-Plaintiff's claim. The First Amendment to the Lease, dated as of January 1, 2011, allowed Awrey to defer $231,316.25 of the basic rent accruing during the first six months of 2011.[11] And even though the Lease called for a security deposit of $475,000, to secure Awrey's obligations under the Lease,[12] the Second Amendment to Lease, dated February 1, 2012, reduced the security deposit to $118,750.[13] This was extraordinary because although the Lease provided for reductions to the security deposit if Awrey demonstrated sufficient financial strength,[14] a) Awrey's need to defer rent undermined any claim to financial strength, and b) the Lease provided that "In no event shall the security deposit be less than $237,000."[15] In the Third Amendment to Lease, dated July 1, 2012, Awrey acknowledged that it owed $212,039.90 in deferred rent, plus $750,123.27 for non-payment of taxes,[16] and Plaintiff agreed to forbear from exercising its rights

[8] See Exhibit C hereto at 1, 3, and Exhibit C to the Lease.

[9] Exhibit C hereto at 35.

[10] Also part of Exhibit C hereto.

[11] See First Amendment to Lease – Part of Exhibit C hereto – at 1 and text following the revised Exhibit C to that Amendment.

[12] Exhibit C hereto at 33.

[13] Second Amendment to Lease at 2.

[14] Exhibit C hereto at 33-34.

[15] Exhibit C hereto at 34.

[16] Third Amendment to Lease at 1-2. These references to deferred rent and tax payments are somewhat at odds with Appellant-Plaintiff's representations to the circuit court, in October, 2013, that Awrey's rent "was not far behind[,]" October 4, 2013 transcript (Exhibit D hereto) at 11. These representations were offered to bolster Appellant-Plaintiff's assertions of its own ignorance regarding Awrey's water arrearages, Exhibit D at 10-11, in the mistaken belief that such ignorance had legal significance.

under the Lease to collect those amounts.[17] Thus Appellant-Plaintiff's strategy for dealing with Awrey's looming insolvency contained a large measure of forbearance and accommodation of Awrey.

Perhaps that spirit of accommodation explains why Appellant-Plaintiff did not exercise its rights under Section 5.02 of the Lease. Section 5.02 lumped "water and sewer charges" together with other governmental assessments and fees under the heading of "Taxes," and required Awrey to pay them directly. Moreover, Awrey was obligated to

> furnish to [Appellant-Plaintiff], promptly after request therefor, proof of payment of all [such] items[.][18]

Presumably Appellant-Plaintiff would not have remained ignorant had it simply insisted Awrey provide proof of payment of the water bills.

C. The Subordination Agreement[19]

Apparently, Appellant-Plaintiff was not the only party accommodating Awrey during this period. The Subordination Agreement recites that Awrey's lender, Cole Taylor Bank, "agreed . . . to make certain loans and financial accommodations" to Awrey in a Credit and Security Agreement "of even date" with the Subordination Agreement.[20] But "[a]s an inducement" to Cole Taylor Bank to "continue to make such loans and financial accommodations[,]" the Bank "required" Awrey and the City to sign the Subordination Agreement.[21]

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[17] Third Amendment to Lease at 2.

[18] Exhibit C hereto at 9.

[19] The Subordination Agreement and issues connected therewith have absolutely no bearing on the validity of the water/sewer liens, which is the ultimate legal issue in this case. But because Appellant-Plaintiff has continued to push its conspiracy theory about a purported connection between the Subordination Agreement and the water/sewer liens (See, e.g., Application at 7-9, 34-36), Livonia offers this discussion for the sake of clarity.

[20] See Exhibit B at 1, Recital A.

[21] See Exhibit B at 1, Recital D.

The reason the Bank required this is straightforward. Awrey's obligations to the Bank were secured by the "now existing and hereafter acquired personal property" of Awrey, which the Subordination Agreement termed the "Collateral."[22] But the City also had an interest in the Collateral.[23] Although the Subordination Agreement does not say this, MCL 211.40 dictates that the City has a superpriority lien on personal property to secure the payment of personal property taxes. So the point of the Subordination Agreement was for the City to subordinate its superpriority lien to the Bank's lien on the Collateral, thus enhancing the Bank's security so the Bank would be more willing to provide cash or other "accommodations" to Awrey.[24]

To the extent the Subordination Agreement "worked," i.e., resulted in more cash for Awrey, the Subordination Agreement may actually have benefited Appellant-Plaintiff since, as has been shown, Awrey owed Appellant-Plaintiff a great deal of money. And notwithstanding Appellant-Plaintiff's indignant attacks on the Subordination Agreement, the Subordination Agreement could not possibly hurt Appellant-Plaintiff. The reason is simple: personal property taxes and water/sewer bills are separate debts with completely separate security. Though Appellant-Plaintiff's real estate secured the payment of Awrey's water bills, per MCL 123.162 and MCL 141.121, there is no lien on Appellant-Plaintiff's real property for Awrey's personal property tax bill. So even had the Subordination Agreement thwarted the City's personal property tax collection, the City would not have been able to tap Appellant-Plaintiff's realty to collect those personal property taxes. By the same token, since there is no water/sewer lien on personal property, the Subordination Agreement did not stop the City from using Awrey's personal property

[22] See Exhibit B at 1, Recital A.

[23] See Exhibit B at 1, Recital B.

[24] See Exhibit B at 1, Recital C and Section 2.1 at 2.

as collateral for the water/sewer bills. The *Legislature* dictated that result when it gave the City an interest in Appellant-Plaintiff's real property to secure the water bills, per MCL 123.162 and MCL 141.121(3), while reserving personal property to serve as collateral for personal property taxes.[25]

As the Court of Appeals put it, Livonia never made any representations to Appellant-Plaintiff.

> Any representations made were to Awrey and Cole Taylor Bank, entities that are not parties to this case[,]

NL, supra, at 24[26], because the Subordination Agreement did not touch on Appellant-Plaintiff's interests.

By the same token, the Court of Appeals recognized that Livonia did not "receive . . . a benefit through [Appellant-Plaintiff] from the Subordination Agreement." *NL, supra*, at 24-25. It may be the case that either or both of the parties to this litigation received a benefit through *Awrey* from the Subordination Agreement, assuming the Bank provided Awrey with additional cash and Awrey used some or all of it to pay its obligations to the parties at bar. But there is no way Livonia could have received a benefit from Appellant-Plaintiff through the Subordination Agreement.

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[25] All this is borne out by the Settlement Agreement and Release ending the litigation surrounding the validity of the Subordination Agreement, Exhibit E hereto. Exhibit E recites at 1, para 1, that the entire settlement amount is paid in satisfaction of Awrey's personal property taxes. At 1-2, para 3, the City releases *only* its claim for personal property taxes.

[26] See Exhibit B at 5, where Section 6 of the Subordination Agreement records a series of representations purportedly given by the City. For reasons which are not germane here, the City challenged the validity of the Subordination Agreement. As the Court of Appeals evidently surmised, the Bank was indignant at the City's repudiation of those representations. By contrast, as a non-party to the Subordination Agreement, Appellant-Plaintiff received no such representations.

LAW AND ARGUMENT

ARGUMENT

I. WHERE THE COURT OF APPEALS ACCURATELY DISCERNED THE MEANING OF THE PERTINENT STATUTES AND ORDINANCE, THE COURT OF APPEALS DECISION SHOULD STAND WITHOUT FURTHER APPELLATE REVIEW OF THIS CASE.

A. Despite Appellant-Plaintiff's Assertion of a Public Policy Reason Why Appellant-Plaintiff Should Receive Free Water Service, Policy Considerations Actually Support the Court of Appeals Decision.

Appellant-Plaintiff complains of the Court of Appeals using "concepts like *pari materia*,"[27] but such tools are useful in understanding and interpreting statutes and ordinances, and the Court of Appeals was right to use it. For example, in considering Appellant-Plaintiff's claims in this case, it must always be borne in mind that, as the Court of Appeals said,

> Notice of the lien . . . was constructive [per] MCL 123.164 and did not require actual notice by defendant[.]

NL, supra, at 18. Because MCL 123.164 specifically provides that the City's "records . . . constitute notice[,]" Appellant-Plaintiff had *legal* notice of the content of those records regardless of its impossible-to-assess claims of subjective ignorance.[28] This is critical because Appellant-Plaintiff says

> A principal policy reason the Ordinance mandates . . . timely placement by Defendant on the tax roll is to prevent exactly what has happened in this case, *i.e.*, to prevent the accruing of years' worth of unpaid bills *without the property owner's knowledge*.

Application at 17-18 (emphasis added). Since the statute *ascribes knowledge* of the records to the property owner – and everybody else, for that matter – this "principal policy reason" is exposed as

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[27] See Application at 13.

[28] Appellant-Plaintiff refused to provide discovery of documents which might have shed light on the question what Appellant-Plaintiff knew, and when it knew it.

a "manifest hoax and humbug." *People v Gilman*, 121 Mich. 187, 189; 80 NW 4 (1899). And Appellant-Plaintiff cites no other policy reason.[29] Nor does Appellant-Plaintiff allege any way in which an untimely tax bill could harm a property owner if the owner is not allowed to claim ignorance.[30]

So Appellant-Plaintiff was not cognizably harmed by anything the City did and cannot conjure up a plausible policy reason to support its theory that the City forfeits the liens if it does not place them on the tax roll at the first opportunity. Especially in light of the interests of all those ratepayers who will have to subsidize Appellant-Plaintiff if the Court of Appeals is reversed, policy considerations actually favor the City.

> This Court has frequently articulated the "great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." *United States* v *Nashville, C & St L R Co*, 118 US 120, 125 (1886). [Additional citations omitted.] We would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake. When, as here, there are less drastic remedies available for failure to meet a statutory deadline, courts should not assume that Congress intended the agency to lose its power to act.

Brock v Pierce County, 476 US 253, 260; 106 S Ct 1834; 90 L Ed 2d 248 (1986)(footnote omitted).

> Nor, since *Brock*, have we ever construed a provision that the Government "shall" act within a specified time, without more, as a jurisdictional limit precluding action later. Thus, a provision that a detention hearing "'shall be held immediately upon the [detainee's] first appearance before the judicial officer'" did not bar detention after a tardy hearing, *United States* v *Montalvo-Murillo*, 495 US 711, 714, 109 L Ed 2d 720, 110 S Ct 2072 (1990) (quoting 18 U.S.C. § 3142(f)), and a mandate that the Secretary of Health and Human Services "'shall report'" within a certain time did "not mean that [the] official lacked power to act beyond it," *Regions Hospital* v *Shalala*, 522 US 448, 459, n 3, 139 L Ed 2d 895, 118 S Ct 909 (1998).

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[29] The actual policy reason is discussed *infra*, at 18-19.

[30] Indeed, a delayed tax bill could be a boon to a landlord. If the tenant is able to pay off the arrearage in the interim, the landlord might never be billed for the water.

> We have summed up this way: "if a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction." *United States* v *James Daniel Good Real Property*, 510 US. 43, 63, 126 L Ed 2d 490, 114 S Ct 492 (1993).

Barnhart v Peabody Coal Co, 537 US 149, 158-159; 123 S Ct 748; 154 L Ed 2d 653 (2003). In the instant case, as with the cases above, the public interest is squarely at odds with Appellant-Plaintiff's all-or-nothing approach. And in such cases, the word "shall" does not have the mindlessly destructive effect Appellant-Plaintiff assigns it.[31] Unlike Appellant-Plaintiff, courts prefer more judicious remedies.

A case in point: *Jones v Dep't of Corr*, 468 Mich 646; 664 NW2d 717 (2003). In *Jones*, this Court was called upon to decide the consequence of noncompliance with the 45-day time limit for providing a fact-finding hearing for a parolee accused of a parole violation. MCL 791.240a(3); *Jones*, *supra*, at 650-651. This Court said

> We decline to impose the relinquishment of the parole board's statutory authority to revoke parole as a remedy for a violation of the forty-five-day limitation period provided in MCL 791.240a(1). To infer such a legislative intent where none is indicated either in the text of MCL 791.240a or elsewhere in the statutory scheme "would be an exercise of *will* rather than *judgment*." *People v Stevens (After Remand)*, 460 Mich 626, 645; 597 NW2d 53 (1999) (emphasis in original).

Jones, *supra*, at 656. This Court felt so strongly about not inferring a forfeiture when the statute does not require it that the Court's previous ruling in *Stewart v Parole Board*, 382 Mich. 474; 170

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[31] It should be recalled that

> A debt is the creditor's property.

Lampe v Kash, 735 F3d 942, 943 (CA 6, 2013). And the same can be said for statutory liens. *County of Orange v Merrill Lynch & Co.* (*In re County of Orange*), 191 BR 1005, 1018 (1996); *First of Am Bank, N.A. v Netsch*, 166 Ill. 2d 165, 185; 651 NE2d 1105 (1995*); Hogue v D N Morrison Const Co.*, 115 Fla. 293, 309; 156 So 377(1933). Appellant-Plaintiff would have this Court believe that the statutes and ordinance intend – without actually stating the intention – that this property of the City be forfeited any time enforcement procedures are not followed to the letter.

NW2d 16 (1969) was "overrule[d] . . . to the extent that it conflicts with [the *Jones*] holding." *Jones, supra*, at 656. Similarly, in the case at bar, neither the ordinance nor the statutes make any reference to forfeiture of the liens as a consequence of failure to put an arrearage on the tax bill at the earliest opportunity. The statutes and/or ordinance certainly could have explicitly required such a draconian remedy if such were intended:

> The Legislature well knows how to provide remedies for statutory time limitation violations and has explicitly done so in other settings.

Jones, supra, at 656, n. 13. As the Court of Appeals observed, in the case at bar, applicable statutes take the opposite tack. MCL 123.166, after setting forth various collection options, concludes

> However, *a municipality's attempt to collect* these sewage system or water rates . . . by any process *shall not invalidate or waive the lien upon the premises*.

NL, supra, at 7, quoting MCL 123.166. [Emphasis in *NL*.]

As the precedents of both the U.S. Supreme Court and this Court make clear, plaintiffs like Appellant-Plaintiff do not get to write their own remedies into the law. Take, for example, *City of South Haven v Van Buren County Bd. of Comm'rs*, 478 Mich 518; 734 NW2d 533 (2007). *South Haven* dealt with the allocation of proceeds of a County Road Commission millage. This Court said

> The term "shall" indicates that the [statutory] formula for allocating funds is mandatory.

South Haven, supra, at 526. But when the City of South Haven sued to collect funds according to the allocation, this Court observed that

> Although defendants violated their statutory duty . . . at issue in this case is whether the city is entitled to any relief for these statutory violations.

South Haven, supra, at 528. This Court rejected South Haven's chosen remedy for the violation, noting

> "It is well settled that when a statute provides a remedy, a court should enforce the legislative remedy rather than one the court prefers."

Ibid. (Footnote omitted.) Because the statute allowed the Attorney General to sue, but did not extend the same privilege to South Haven, this Court ruled that South Haven's remedy was a suit by the Attorney General. *South Haven, supra*, at 530.

The Court of Appeals elucidated some of the reasoning behind the statutory timetable cases in *People v Smith*, 200 Mich App 237; 504 NW2d 21 (1993). *Smith* involved a statute which said a person charged with misdemeanor drunk driving had to be arraigned not more than 14 days after the date of arrest. *Smith, supra*, at 239, citing MCL 257.625b(1). The defendant was arrested on April 9, but not actually arraigned before the following October 28, when a district judge ruled that she could never be prosecuted for the charge. *Smith, supra*, at 240-241. Smith's (and the district court's) remedy for the delay – dismissal – effectively made governmental inaction an excuse for drunk driving, in the same way that Appellant-Plaintiff hopes to turn the City's forbearance into an excuse for nonpayment of the water bill.[32] But the Court of Appeals sensibly rejected that approach.

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[32] Another of Appellant-Plaintiff's favorite excuses is its claim that

> **None of this water was ever used by Plaintiff**

Application at 5 (emphasis original). It is of course impossible for the City to know whether Appellant-Plaintiff's agents ever flushed a toilet or opened a spigot at the site. But Appellant-Plaintiff clearly used the City's water service to help attract and retain a tenant who generated a $1,000,000 annual rental income stream. It is difficult to imagine a bakery – or any industrial tenant – paying that kind of money for a space off the water/sewer "grid."

> At the outset, we consider it curious that the lower courts have construed statutory amendments to the drunk driving laws, . . . designed to make the workings of the criminal justice system more swift and sure and to increase the penalties for such conduct, into an additional, technical defense for accused drunk drivers . . . . Frustration of the legislative purpose by delay, whether caused judicially or by police or prosecutors, hardly implies that the prosecution must be abated with prejudice. *The Legislature did not purport to establish a system whereby there is either speedy justice or no justice at all.*

Smith, supra, at 241 (emphasis added). So the *NL* panel was simply following the *Smith* Court's lead when it held that the statutes and ordinance at issue in this case did not purport to establish a system whereby there is either speedy payment of water bills or no payment at all.

The bottom line: No public policy supports Appellant-Plaintiff's interpretation of "shall" and its implications in this case. For this reason, among others, the Court of Appeals found that "the trial court's ruling does not comport with the referenced statutory schemes," *NL, supra,* at 20, and the Court of Appeals got it right.

B. Per The Applicable Statutes And Ordinance, The City Does Not Owe Appellant-Plaintiff – And Appellant-Plaintiff Has No Standing To Enforce – Any Duty Regarding Collection.

1. The City's Duties Regarding Collection are owed to Bondholders, not Appellant-Plaintiff.

Jones, supra, and *Smith, supra,* as well as *Brock, supra,* and *Barnhart, supra,* and cases cited therein, counsel that courts should look to the *reason* a party "shall" perform an act in determining what consequence should flow from nonperformance. Though it did not involve governmental nonperformance, this Court's decision in *Bergy Bros, Inc v Zeeland Feeder Pig, Inc,* 415 Mich 286, 327 NW2d 305 (1982), is similar. In that case, the statute dictated that the officer of a corporation which had defaulted in its reporting and fee-paying obligations to the state "shall be liable" for debts incurred by the corporation during the default. *Zeeland Feeder Pig, supra,* at 293. But this Court said

> [W]e see no reason to infer that the forfeiture statute was intended to have a separate penal effect on officers. Its basic purpose was to terminate defunct corporations and to encourage the payment of fees and the filing of reports.

Zeeland Feeder Pig, *supra*, at 297. So it is necessary to examine the applicable statutes and ordinance to understand the duty behind the rule that the City "shall" timely place long (six months or more) water arrearages on the property tax bill.

a. The Statute/Ordinance Text.

Two statutes and an ordinance govern this case. These are, in the order in which the Court of Appeals introduced them, 1) 1939 PA 1978, MCL 123.161 *et seq.* (hereafter, the "1939 Act")[33], 2) the Revenue Bond Act of 1933, MCL 141.101, *et seq.* (hereafter "Revenue Bond Act")[34], and 3) the pertinent City ordinance provisions, especially Livonia Code of Ordinances §13.08.350(A).[35] These are the provisions which the Court of Appeals – following this Court's lead in *Waltz v Wyse*, 469 Mich 642, 665-666; 677 NW2d 813 (2004) – considered *in pari materia*. *NL*, *supra*, at 16-17.

The oldest of these is the Revenue Bond Act. Although §4 of the Revenue Bond Act, MCL 141.104, provides that the powers granted therein can be exercised even though no bonds are issued, this legislation is mainly about bonds and bondholders. So, for example,

- Bondholders get a statutory lien on the net revenues of the system. MCL 141.108.
- Water/sewer rates (or rates charged for other public improvements built pursuant to the Revenue Bond Act) must be high enough to cover costs of administration, operation, and maintenance of the system, as well as bond payments and bond reserves. MCL 141.121(1).
- No free water/sewer usage is allowed. MCL 141.118.

[33] Described in *NL*, *supra*, at 5-10.

[34] Described in *NL*, *supra*, at 10-14.

[35] Quoted in *NL*, *supra*, at 14.

- A bondholder representing not less than 20% of the outstanding bonds can enforce/compel higher rates, collection activity, and essentially all other business functions of the system. MCL 141.109.

- Bondholders can force the system into receivership if bond payments are missed. MCL 141.110.

- Even lands which are severed from the City remain obligated on the bonds. MCL 141.132.

It is against this backdrop that MCL 141.121(3) provides that charges to the premises served may be a lien on those premises pursuant to an ordinance detailing how arrearages six months old or older can be entered on the next tax roll. In context, it is clear that this provision, like most provisions of the Revenue Bond Act, is a protection for bondholders. These protections are further bolstered by MCL 141.102, which provides that the Revenue Bond Act is "cumulative authority . . . for the powers herein granted" and creates "full and complete additional and alternate methods for the exercise of such powers." As if that were not enough, MCL 141.134 asserts that the Revenue Bond Act is

> necessary for and to secure the public health, safety, convenience and welfare of the . . . cities . . . of the State of Michigan[, so it] shall be liberally construed to effect the purposes hereof.

Next in time came the 1939 Act. As has already been discussed, §4 of the 1939 Act[36] says the City's water/sewer records constitute notice of the water/sewer liens, and thus nullifies the claims of ignorance which underpin all Appellant-Plaintiff's claims. Section 2 of the 1939 Act[37] decrees that the lien attaches as soon as the water is provided, thereby torpedoing Appellant-Plaintiff's spurious claim that the water/sewer lien in this case was unperfected.[38] Section 5 of the

[36] MCL 123,164.

[37] MCL 123.162.

[38] Application at 19.

1939 Act[39] provides that the water/sewer lien supercedes all other liens except tax liens. Section 3 of the 1939 Act[40] provides that the lien may be enforced in a variety of ways, including

> the manner prescribed . . . by the general laws of the state providing for the enforcement of tax liens.

As with the Revenue Bond Act, the 1939 Act says, in its last section,[41] that it is to be construed as "an additional grant of power[.]"

The Court of Appeals actually quoted two sections of the City's ordinances, i.e., Code of Ordinances §13.08.300 (prohibiting free service)[42] and §13.08.350(A)[43] (implementing MCL 141.121(3)[44]). Of these, the most germane is undoubtedly §13.08.350(A), which provides, in pertinent part:

> **13.08.350(A) - Enforcement.** Charges for water service constitute a lien on the property served, and during March of each year the . . . agency charged with the management of the system shall certify any such charges which as of March 1st of that year have been delinquent six (6) months or more to the city assessor, who shall enter the same upon the city tax roll of that year against the premises [served].

b. Implications of the Statute/Ordinance Text.

The reason that a Revenue Bond Act lien has to be implemented by an ordinance lies in the statute's versatility. A great variety of public improvements can be financed through the Revenue Bond Act. MCL 141.103, MCL 141.104. These include some public improvements for which rates are collected via liens on premises served. In addition to water and sewer systems,

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[39] MCL 123.165.

[40] MCL 123.163.

[41] MCL 123,167.

[42] Quoted in *NL, supra*, at 17.

[43] Quoted in *NL, supra*, at 14.

[44] Note that this ordinance provision tracks the Revenue Bond Act's references to six-month old delinquencies, annual certification, and the next tax roll. MCL 141.121(3).

these include "utility systems for . . . light, heat or power" and "cable television systems." MCL 141.103(b). But other public improvements financed through the Revenue Bond Act may be problematic or impossible to fund via liens on premises served. These include parking garages, harbors, highways, bridges, markets, stadiums, museums and so forth. *Ibid*.

The optional nature of the Revenue Bond Act lien may explain why the Legislature felt a need to adopt the 1939 Act a mere six years after adoption of the Revenue Bond Act. The 1939 Act applies only to water and sewer systems. It makes no mention of bonds or bondholders. But it does impose an immediate lien for every drop of water provided by the system. MCL 123.162. It eliminates any notice issue. MCL 123.164. And it allows the use of the general laws for collection of tax liens without the 6-month minimum and cumbersome procedures required by the Revenue Bond Act. MCL 123.163. In short, it is an "additional grant of power." MCL 123.167.[45] In effect, the Legislature built redundancy into the system to make water/sewer liens bullet proof.

This sheds light on the question why the City "shall" timely place water arrearages on the tax bill. The reason is clearly *not* Appellant-Plaintiff's answer, i.e., protection for the inattentive landlord. It is apparent even to a casual reader of the Revenue Bond Act that protection of bondholders is a much higher legislative priority. [46] This, in turn, makes clear the party to whom

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[45] Lest there be any lingering question on the separate nature of the 1939 Act, MCL 123.163 speaks of "the lien created by this act." Appellant-Plaintiff's theory that the ordinance somehow kills *sub silentio* the 1939 Act's additional grant of authority – see, e.g., Application at 25 – inspired the Court of Appeals' comment about the "error" of "elevating the local ordinance" above the 1939 Act and Revenue Bond Act. *NL, supra*, at 17. See also this Court's ruling in *Ter Beek v City of Wyoming*, 495 Mich 1, 19-20; 846 NW2d 531 (2014):

> "The City . . . 'is precluded from enacting an ordinance if . . . the ordinance is in direct conflict with the state statutory scheme . . . .'" and "'A direct conflict exists when "the ordinance . . . prohibits what the statute permits."'"

[46] So, for example, Appellant-Plaintiff claims it can escape any obligation to the bondholders if the City misses its first chance to place the water arrearage on the tax bills, but MCL 141.132 provides that Appellant-Plaintiff cannot escape even if its land is detached from the City!

the City owes the duty to timely place the water arrearage on the tax bill, the reason for the duty, and the remedy for nonperformance of the duty. The reason for the duty is to assure timely collection – to prevent the system going into receivership, as outlined in section 10 of the Revenue Bond Act, MCL 141.110. The recipient/beneficiary of the duty is/are the bondholder(s), who might otherwise be compelled to seek appointment of a receiver. And the remedy for nonperformance, in appropriate cases, is an order pursuant to section 9 of the Revenue Bond Act, MCL 141.109, compelling expedited collection. [47]

2. Appellant-Plaintiff Lacks Standing to Pursue this Case.

Indeed, as this Court has ruled, only bondholders have *standing* to seek an order to pursue timely collection. *Grand Rapids Independent Publishing Co v City of Grand Rapids*, 335 Mich 620; 56 NW2d 403 (1953).

Appellant-Plaintiff's standing in this case would be subject to serious question even without *Independent Publishing*, *supra*. For a start, Livonia had no duty to Appellant-Plaintiff on these facts. Appellant-Plaintiff could have triggered a duty by filing a tenant responsibility notice, but Appellant-Plaintiff opted not to do so.

> Defendants had no obligation to inform plaintiffs of what they already knew as a matter of law[.]

Black v Rasor, unpublished opinion of the Michigan Court of Appeals, No. 319449, decided May 12, 2015, 2015 Mich App LEXIS 946, at 8.[48] The notice provision of MCL 123.164 is surely

[47] It need hardly be said that Appellant-Plaintiff's preferred remedy – preventing collection altogether – is diametrically opposed to the legislative intent in this case.

[48] Yes, *Rasor* is unpublished, but – apart from the perhaps surprising fact that the defendants in that case were the plaintiffs' *lawyers* – who can argue with the proposition that nobody has to tell a person what that person is already deemed by law to know?

nugatory if the City nevertheless owes Appellant-Plaintiff a duty to provide updates on the amount/existence of the water/sewer liens.

Similarly, Appellant-Plaintiff suffered no cognizable harm under these circumstances. A party only has standing if it suffers harm "in a manner different from the public at large[.]" *Detroit Fire Fighters Ass'n v City of Detroit*, 449 Mich. 629, 633; 537 NW2d 436 (1995). In this case, the statutory liens accrued exactly as they accrue for the public at large. And Appellant-Plaintiff shares the plight of any member of the public who fails to see to it that liens are paid off as soon as they accrue.

But on top of all that, the Revenue Bond Act *allocates* standing among those who might want to litigate a water/sewer system's tardiness in placing water arrearages on tax bills. It is difficult to know, in this regard, whether the Legislature anticipated a suit like Appellant-Plaintiff's in the case at bar, which seeks to punish that tardiness by barring collection. But more likely candidates are easy to imagine: other ratepayers who resent potential favoritism towards Appellant-Plaintiff or other large users; large bondholders looking to protect their investment; or a small bondholder seeking to protect his/her more modest investment or perhaps act as a gadfly.[49] Whatever the Legislature was thinking, it is clear what choice the legislators made. MCL 141.109 provides, in pertinent part, that

> The holder of the bonds, representing in the aggregate not less than 20% of the entire issue then outstanding, may protect and enforce the statutory lien and enforce and compel the performance of all duties of the officials of the borrower, including the fixing of sufficient rates, the collection of revenues, . . . and the proper application of the revenues.

[49] This Court appears to have suspected the plaintiff of this in *Grand Rapids Independent Publishing Co v City of Grand Rapids*, 335 Mich 620, 629; 56 NW2d 403 (1953).

Though the duty to timely place water arrearages on the tax roll flows to all bondholders, it is large bondholders who have the right to enforce and compel performance of that duty. Appellant-Plaintiff's position is frankly antagonistic to the interests of large and small bondholders alike;[50] the Revenue Bond Act says the bondholders win that contest.

> Everyone is presumed to know the law. While plaintiffs base their complaints on an alleged violation of certain provisions of the act, they chose to ignore the 1 in which the act requires 20% of the bondholders to bring the action.

Grand Rapids Independent Publishing Co. v City of Grand Rapids, 335 Mich 620, 630; 56 NW2d 403 (1953). If, as in *Independent Publishing*, holders of less than 1% of the outstanding bonds lacked standing to bring suit, how can Appellant-Plaintiff – which has not alleged that it owns *any* bonds, and which seeks a result inimical to the interests of bondholders – have standing?

This Court, together with the Court of Appeals, has already answered that question.

> [B]ecause the statute expressly empowers select persons to file suit under MCL 600.4545, it follows under the principle of *expressio unius est exclusio alterius* that only those individuals specifically identified in the statute have authority to bring an action under the statute. See *Miller*, 481 Mich at 611-612.

Salem Springs, LLC v Salem Twp, __ Mich App __; __ NW2d __; 2015 Mich App LEXIS 1669, at 8 (2015), citing *Miller v Allstate Ins Co*, 481 Mich 601, 611-12; 751 NW2d 463 (2008).[51] Large bondholders are specifically identified in the Revenue Bond Act as having authority to bring an action under the statute. Appellant-Plaintiff is not.

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[50] As Appellant-Plaintiff told the Court of Appeals:

> [T]ypically bondholders . . . would [not] ever want a water lien invalidated . . . [B]ondholders[‘] principal concern is that they get paid.

Plaintiff's Brief on Appeal in the Court of Appeals at 26. Exhibit F attached.

[51] A similar principle was at work in *South Haven, supra*, at 529-531.

To return to *Smith*, *supra*, for a moment, this Court said of the timetable for prosecuting drunk drivers

> The time limits were created not to protect the rights of accused drunk drivers, but to prod the judiciary, and prosecutors who handle drunk driving cases, to move such cases with dispatch.

Smith, *supra*, at 243. In other words, officials involved in such prosecutions had time-sensitive duties, but those duties did not flow to defendants, who lacked standing to assert any breach of such duties.[52] In the same way, the duty to comply with time limits in the instant case flows to the bondholders, rather than Appellant-Plaintiff, so Appellant-Plaintiff lacks standing to take advantage of the alleged breach.

Because Appellant-Plaintiff lacks standing to object to the delay in placing Awrey's unpaid water bills on the tax roll, and no bondholders have complained, the question whether officials of the water/sewer system were right to try to "work with" Awrey is entirely academic. But the bondholders, at least, might well have approved the pragmatism of officials trying to save a company which was not only a major local business, but also a major customer of the water/sewer system. And, one might add, a tenant who provided Appellant-Plaintiff $1,000,000 in rent per year.

C. **Appellant-Plaintiff Spurned its Sole Remedy in this Case.**

As the Revenue Bond Act makes clear, protection of bondholders was the paramount consideration in the adoption of that statute and supporting ordinances. But this does not mean

[52] See also *People v Clark*, 181 Mich App 577, 581; 450 NW2d 75 (1989) ("the purpose of MCL 764.2a . . . is not to protect the rights of criminal defendants, but rather to protect the rights and autonomy of local governments"), and *Maiberger v City of Livonia*, 724 F Supp2d 759, 768 (2010) ("the Michigan Supreme Court held that the plaintiffs lacked standing to bring the suit [because] . . . . statutory provisions that require the acceptance of the lowest responsible bid were not enacted for the benefit of an unsuccessful bidder but were enacted for the benefit of the citizens of the city.")

the interests of landlords like Appellant-Plaintiff were entirely disregarded. Both the Revenue Bond Act and the 1939 Act offer landlords a way to avoid water/sewer liens during tenant occupancy of their properties. So the Revenue Bond Act provides, at MCL 141.121(3),

> [W]hen a tenant is responsible for the payment of the charges and the governing body is so notified in writing, the notice to include a copy of the lease of the affected premises, if there is one, then the charges shall not become a lien against the premises after the date of the notice. The public corporation shall render no further service to the premises until a cash deposit in a sum fixed in the ordinance authorizing the issuance of bonds under this act is made as security for the payment of the charges.

By the same token, MCL 123.165 says

> [T]his act shall not apply if a lease has been legally executed, containing a provision that the lessor shall not be liable for payment of water or sewage system bills accruing subsequent to the filing of the affidavit provided by this section. An affidavit with respect to the execution of a lease containing this provision shall be filed with the board, commission, or other official in charge of the water works system or sewage system, or both, and 20 days' notice shall be given by the lessor of any cancellation, change in, or termination of the lease. The affidavit shall contain a notation of the expiration date of the lease.

These are, in other words, the "legislative remedy" of which this Court spoke in *South Haven, supra*, at 528. Appellant-Plaintiff acknowledged, at 27 of the Application, its failure to avail itself of either provision.

Once again, Appellant-Plaintiff prefers its own remedy, asking this Court to add a prejudice requirement to these Revenue Bond Act and 1939 Act provisions, and asserting that the City has not been prejudiced because the City supposedly had actual knowledge of the lease requiring Awrey to pay for the water. Application at 28. Appellant-Plaintiff does not explain how or when the City came by this actual knowledge, but this is of small consequence in light of this Court's decision in *McCahan v Brennan,* 492 Mich 730; 822 NW2d 747 (2012).

> When the plain language of a statute requires particular notice as a condition for recovery, "no 'saving construction' [is] necessary or allowed. Thus, the engrafting of [a] prejudice requirement onto the statute [is] entirely indefensible."

McCahan, supra, at 744 (footnote omitted), quoting this Court's decision in *Rowland v Washtenaw County Road Comm*, 477 Mich 197, 211; 731 NW2d 41 (2007).

> [W]hen the Legislature specifically qualifies the ability to bring a claim against the state or its subdivision on a plaintiff's meeting certain requirements that the plaintiff fails to meet, no saving construction – such as requiring a defendant to prove actual prejudice – is allowed.

McCahan, supra, at 746.

It is a good thing *McCahan* so holds, because Appellant-Plaintiff's prejudice requirement would otherwise cause a number of problems. First, the Revenue Bond Act requires that, in the event such a notice is provided to the City,

> the public corporation shall render no further service to the premises until a cash deposit in a sum fixed in the ordinance authorizing the issuance of bonds under this act is made as security for the payment of the charges.

MCL 141.121(3). If the notice is not physically given to the City, but is presumed to be ascertained by the City though some sort of gestalt process, when does the deposit requirement kick in? For that matter, when does the lien cease to accrue? A related problem is that Appellant-Plaintiff's prejudice requirement would likely spur water/sewer systems to assume all landlords want their tenants' water shut off in the event an arrearage develops. After all, the managers of the system would likely have little or no prospect of collection from a departed tenant, and could not rely on water/sewer liens. But would every landlord want the water shut off in such circumstances? What if the landlord and tenant are relatives? What if the tenant's rent payments include an amount for water, and the landlord is obligated to pay? Or what if the tenant is a financially struggling industrial concern, whose landlord is forbearing to collect amounts owed by the tenant in hopes

that the tenant can pull through and once again send the landlord $1,000,000 annual rent checks? In Livonia, at least, Code of Ordinances Section 13.08.350(B) requires that

> Water services so discontinued shall not be restored until all sums then due and owing shall be paid.

So the decision to shut off water is irreversible.

Besides those problems, Appellant-Plaintiff is inviting this Court to

> usurp a task expressly [performed] by the Legislature.

Sigal v Detroit, 140 Mich App 39, 44; 362 NW2d 886 (1985).

Appellant-Plaintiff complains that the Court of Appeals gave Appellant-Plaintiff a hard "shall," as opposed to the soft "shall" the City supposedly received. Application at 3-4, 29-30. But in fact the word "shall" is completely unnecessary to resolution of this issue. After all, the pertinent portion of MCL 123.165 says

> [T]he lessor shall not be liable for payment of water or sewage system bills *accruing subsequent to the filing of the affidavit* provided by this section.

[Emphasis added.] Likewise, MCL 141.121(3):

> [I]n a case when a tenant is responsible for the payment of the charges and the governing body is so notified in writing, . . . then the charges shall not become a lien against the premises *after the date of the notice.*

[Emphasis added.] So whether the verb is "shall" or "is/are" or "do/does" or "will" makes no difference. The lien stops *after* the filing of the notice; a landlord's exemption from the lien is triggered by the notice. There is no corresponding statute or ordinance trigger for the accrual of the lien, except the provision of the water itself, per MCL 123.162. So the Court of Appeals' alleged inconsistency regarding the word "shall" is a red herring. Appellant-Plaintiff's exemption from the liens begins when Appellant-Plaintiff files the notice. Because Appellant-Plaintiff did not file the notice, the exemption did not begin.

II. THE COURT OF APPEALS PROPERLY GRANTED THE CITY SUMMARY DISPOSITION AS TO APPELLANT-PLAINTIFF'S TORT CLAIMS.

A. Appellant-Plaintiff Failed to Plead the Elements of the Torts it Alleged Against the City.

Appellant-Plaintiff's Complaint alleged two tort theories of liability against the City: "tortious interference" (Count V, Complaint paras 29-30) and civil conspiracy (Count VI, Complaint paras 31-32).

> The civil conspiracy claim is intrinsically related to the tortious interference claim as it is premised on the same alleged behaviors[.]

NL, supra, at 26. Both claims rest on three actions – the Treasurer's signing the Subordination Agreement, the act of "diverting" money to Cole Taylor Bank, and the City's purported violation of the ordinances (Complaint paras 29, 31). As discussed at length above, Appellant-Plaintiff has no standing to complain of any ordinance violations, as the ordinances in question confer no rights on Appellant-Plaintiff. But this is only one of many problems with Appellant-Plaintiff's tort pleadings.

Also, as discussed at length above, the Subordination Agreement did not and could not harm Appellant-Plaintiff in any way. The City challenged the Subordination Agreement's validity, winning $453,000 in settlement, see Exhibit E, and this is apparently the "diversion" to which Appellant-Plaintiff alludes.[53] But since when does Appellant-Plaintiff, which did not participate in the Subordination Agreement litigation, get to decide how the City should apply the settlement? Given that the City only released – and the other parties therefore only "bought off" – claims related to personal property taxes, how is it improper, or some sort of diversion, for the City to

[53] Appellant-Plaintiff complains – Application at 9 – that the City's failure to share the settlement with Appellant-Plaintiff "add[ed] insult to injury."

apply those amounts to pay off the personal property taxes? As a practical matter, had the City attempted to collect the water bills in that litigation, how could anyone possibly expect the bank – which, according to the Subordination Agreement, had a security interest in Awrey's personal property which conflicted with the City's personal property tax lien – to sit idly by while the City collected not merely the secured personal property taxes, but also the unsecured (as to the personal property) water bills?

The Subordination Agreement and the litigation it spawned are just a distraction. One could say, with more justice, that Appellant-Plaintiff diverted money out of Awrey's $475,000 security deposit which could have been used to pay water bills.[54] Or one could point out that the City's assertedly tortious actions did not violate any right of Appellant-Plaintiff or breach any duty the City owed Appellant-Plaintiff.

> "'It is axiomatic that there can be no tort liability unless [a] defendant[] owed a duty to [a] plaintiff.'"

Hill v Sears, Roebuck & Co., 492 Mich 651; 822 NW2d 190 (2012), quoting *Fultz v Union-Commerce Assocs*, 470 Mich 460, 463; 683 NW2d 587 (2004), which in turn quoted *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 262; 571 NW2d 716 (1997).

> Tort litigation is an adversary contest to right a wrong between contestants[.]

Kidder v Miller-Davis Co., 455 Mich. 25, 38, n 6; 564 NW2d 872 (1997). Where, as here, there is no right, there can be no wrong. The analysis need not go any further; Appellant-Plaintiff has not properly pled any tort claim against the City.

But it is also possible to analyze Appellant-Plaintiff's failure by reference to the elements of the torts alleged.

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[54] Compare the Lease – Exhibit C hereto – at 33-34 with the Second Amendment to Lease at 2.

> The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant.

Knight Enters. v RPF Oil Co., 299 Mich App 275, 280; 829 NW2d 345 (2013). Appellant-Plaintiff's first problem, then, is that its allegations do not show that the City's officials *instigated* any breach.

The Subordination Agreement recites that its origins lay in Awrey's desire for additional credit from the bank.[55] Even if the Treasurer's action in signing the Subordination Agreement can somehow be attributed to Livonia – something the City successfully contested in litigation against Awrey and the bank – the Subordination Agreement recites that it was created to "induce [the bank] to . . . make certain loans . . . to [Awrey]."[56] Moreover, the 2011 date of the Subordination Agreement means the Subordination Agreement could not have instigated the breach because Awrey breached the Lease by failing to timely pay water bills in 2009.[57]

More broadly, intentional interference claims require an improper motive for the interference.

> Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.

Michigan Podiatric Medical Ass'n v Nat'l Foot Care Program, Inc, 175 Mich App 723, 736; 438 NW2d 349 (1989). *BPS Clinical Labs. v Blue Cross & Blue Shield*, 217 Mich App 687, 699; 552 NW2d 919 (1996). Appellant-Plaintiff has not alleged any motive for Livonia's actions other than legitimate business reasons. To the contrary, Appellant-Plaintiff alleged that the City

[55] See Recitals A and D on page 1 of Exhibit B hereto.

[56] Exhibit B hereto at 1.

[57] The Complaint says the unpaid water bills – and, thus, the breach of the Lease – dated back to 2009 (Complaint paras 5, 7, 9, 13), whereas the Subordination Agreement dates to 2011 (Complaint para 10).

> did not want to take any . . . action against Awrey . . . which could have caused Awrey to cease operations . . . [because] Awrey [was] a significant employer in the City of Livonia.[58]

It is beyond question that the desire to recruit and retain employers is a legitimate business reason for a city to take action, no matter how diabolical Appellant-Plaintiff attempts to make it sound. See, e.g., *City of Gaylord v Gaylord City Clerk*, 378 Mich 273, 300-301; 144 NW2d 460 (1966). And even if Livonia's officials were acting in pursuit of some nefarious purpose of their own – though on these facts it is difficult to imagine what that could be – the City would not be liable for their actions.

> "an employer is not liable for the torts . . . committed by an employee when those torts are beyond the scope of the employer's business" . . . . Independent action, intended solely to further the employee's individual interests, cannot be fairly characterized as falling within the scope of employment.

Hamed v Wayne County, 490 Mich 1, 11; 803 NW2d 237 (2011). Actions taken "solely in furtherance of . . . criminal interests" provide "no fair basis on which one could conclude that [the City] vicariously took part in the wrongful acts." *Hamed, supra*, at 11-12.

Plaintiff's failure to plead a tortious interference claim dooms its civil conspiracy claim.

> We note there is no civil action for conspiracy alone; there must be an underlying actionable tort. *Earp v Detroit*, 16 Mich App 271, 275; 167 NW2d 841 (1969)

Yoost v Caspari, 295 Mich App 209, 224, n 2; 813 NW2d 783 (2012).

> "[A] claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate actionable tort". *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986).

[58] Application at 6.

Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n, 257 Mich App 365, 384; 670 NW2d 569 (2003). Nor is it enough to simply cry "Conspiracy!" as Appellant-Plaintiff did in this case.

> [C]onclusory allegations of a conspiracy will not suffice. Plaintiff failed to present material facts showing the existence and scope of a conspiracy. *Stern* v *Sommerville Communications Corp*, 529 F Supp 29, 30 (ED Mich 1981).

Payton v City of Detroit, 211 Mich App 375, 397; 536 NW2d 233 (1995). Nothing in the Complaint identifies any common interest or purpose of the alleged conspirators – Awrey, the City, and the bank – or any concrete action taken pursuant to that common purpose. Though Appellant-Plaintiff bewails the alleged dearth of discovery, Application at 30, 32, Appellant-Plaintiff never sought any discovery from the City's alleged co-conspirators.

B. The City is Immune from Liability for the Alleged Torts

> The providing a sufficient water supply for the inhabitants of a great and growing city, is one of the highest functions of municipal government, and tends greatly to enhance the value of all real estate in its limits; and the charges for the use of the water may well be entitled to take high rank among outstanding claims against the property so benefited.

Provident Institution v Jersey City, 113 US 506, 516; 5 S Ct 612; 28 L Ed. 1102 (1885). So the City was not merely performing a governmental function when providing water/sewer service and billing for same – the City was performing "one of the highest functions of municipal government," according to the U.S. Supreme Court. This is critical to this case because

> The governmental tort liability act (GTLA) provides that, in general, governmental agencies engaged in governmental functions are immune from tort liability. MCL 691.1407(1).

Ward v Mich. State University, 287 Mich App 76, 84; 782 NW2d 514 (2010). So the City was immune from even the fanciful torts alleged in this case.

Although Appellant-Plaintiff originally raised its tort allegations in its Complaint, Appellant-Plaintiff did not even attempt to plead in avoidance of governmental immunity, *NL, supra,* at 27-28, despite the absolute requirement that a plaintiff suing the government in tort plead in avoidance of governmental immunity. *Odom v Wayne Co.*, 482 Mich 459, 466; 760 NW2d 217 (2008). The reason for Appellant-Plaintiff's failure is, of course, that there is no way to avoid governmental immunity in this case.

> The immunity from tort liability provided by the governmental immunity act is expressed in the broadest possible language; it extends to all governmental agencies and applies to all tort liability when governmental agencies are engaged in the exercise or discharge of governmental functions. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 156; 615 NW2d 702 (2000). Further, the exceptions to governmental immunity are to be narrowly construed. *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609, 614; 664 NW2d 165 (2003).

McLean v McElhaney, 289 Mich App 592, 598; 798 NW2d 29 (2010). So

> according to well-established caselaw "this definition [of "governmental function"] is to be broadly applied and requires only that 'there be *some* constitutional, statutory or other legal basis for the activity in which the governmental agency was engaged.'" *Harris* [*v Univ of Michigan Bd of Regents*, 219 Mich App 679, 558 NW2d 225 (1996)] at 684 (citations omitted; emphasis in original). Also, we look to the general activity involved rather than the specific conduct engaged in when the alleged injury occurred.

Ward, supra, at 84. Looking at the general activity – water/sewer service – leaves no doubt that the city is immune. *NL, supra,* at 28.

C. No Amount of Discovery Will Change the Fact That the City is Immune from Appellant-Plaintiff's Tort Claims.

The Court of Appeals took the trial court to task for "shirk[ing] its responsibilities" by failing to address the City's summary disposition request vis-à-vis Appellant-Plaintiff's tort and equitable claims on the alternate grounds that they were moot or "premature due to the ongoing discovery." *NL, supra,* at 22. Appellant-Plaintiff, on the other hand, laments that it was unable to

depose Livonia's Mayor and Treasurer, arguing the "near certainty" that such discovery would unearth evidence of "improper conduct." Application at 32.

Leaving aside the apex deposition problem,[59] "improper conduct" is an infinitely malleable concept, particularly in Appellant-Plaintiff's hands.[60]

> Improper performance of an activity authorized by law is, despite its impropriety, still "authorized" . . . . In applying the "governmental function" test of the immunity statute, this Court must consider that statute's breadth. The statute extends immunity "to *all* governmental agencies for *all* tort liability *whenever* they are engaged in the exercise or discharge of a governmental function." *Ross* [*v. Consumers Power Co*, 420 Mich 567; 363 NW2d 641 (1984)], at 618 (emphasis in original).

Richardson v Jackson County, 432 Mich. 377, 385-386; 443 NW2d 105 (1989). Unfortunately for Appellant-Plaintiff,

> summary disposition is proper when a claim is barred by immunity granted by law. To survive such a motion, the plaintiff must allege facts justifying the application of an exception to governmental immunity. *Wade v Dep't of Corrections*, 439 Mich 158, 164; 483 NW2d 26 (1992).

Fane v Detroit Library Comm'n, 465 Mich 68, 74; 631 NW2d 678 (2001). Appellant-Plaintiff has pled no such fact, apparently on the theory that it should be allowed to pursue discovery until it can come up with an arguable basis for avoiding immunity.

The trouble with this theory is two-fold. First, although Appellant-Plaintiff provided no discovery documents itself, Appellant-Plaintiff received all the discovery documents it requested – hundreds of pages, many of which found their way into Appellant-Plaintiff's exhibits.[61] And

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[59] See *Alberto v Toyota Motor Corp*, 289 Mich App 328, 336; 796 NW2d 490 (2010).

[60] It will be recalled that Appellant-Plaintiff deemed it improper to pay off personal property taxes with the settlement proceeds from the City's enforcement of its personal property tax liens. Application at 9.

[61] See Application Exhibits 6, 7, 10, 11, 12 and 14. Such documents are easy to identify because they bear stamps saying "CTY" or "LIV," followed by a page number indicating the document's location among the documents provided by the City.

Appellant-Plaintiff *still* has not alleged facts justifying an exception to immunity. The second problem is that

> summary disposition is appropriate if no fair chance exists that further discovery will result in factual support for the nonmoving party. *Mackey* v *Dep't of Corrections*, 205 Mich App 330, 333; 517 NW2d 303 (1994).

Northland Wheels Roller Skating Ctr v Detroit Free Press, 213 Mich App 317, 329-330; 539 NW2d 774 (1995). To be more specific, summary disposition is appropriate where its basis

> is not a matter that requires further factual development.

Liparoto Constr., Inc. v Gen. Shale Brick, Inc., 284 Mich App 25, 34; 772 NW2d 801 (2009). No matter what facts are discovered, water/sewer service will not cease to be a governmental function. Nor will any of the narrow and patently irrelevant exceptions to immunity suddenly become relevant. Appellant-Plaintiff has alleged that Livonia committed intentional torts. But even an intentional tort claim more reality based than Appellant-Plaintiff's runs up against an insurmountable barrier:

> [N]o intentional tort exception [to governmental immunity] exists, and an act "may be [the] exercise or discharge of a governmental function even though it results in an intentional tort."

Smith v State, 428 Mich 540, 593; 410 NW2d 749 (1987) (citation omitted). In the final analysis, further discovery is part of what governmental entities are immune from.

> [A] "central purpose" of governmental immunity is "to prevent a drain on the state's financial resources, by avoiding even the expense of having to contest on the merits any claim barred by governmental immunity." *Mack v Detroit*, 467 Mich 186, 203 n 18; 649 NW2d 47 (2002).

Costa v Community Emergency Med. Servs., 475 Mich 403, 410; 716 NW2d 236 (2006).

> Placing this burden on the plaintiff relieves the government of the expense of discovery and trial in many cases.

Odom, supra, at 479. Defendant is immune from Plaintiff's tort claims, as the Court of Appeals correctly found. *NL, supra*, at 28-29.

III. THE COURT OF APPEALS WAS RIGHT TO GRANT THE CITY SUMMARY DISPOSITION AS TO APPELLANT-PLAINTIFF'S EQUITABLE CLAIMS.

> [I]f a court is free to cast aside, under the guise of equity, a plain statute. . . simply because the court views the statute as "unfair," then our system of government ceases to function as a representative democracy. No longer will policy debates occur, and policy choices be made, in the Legislature. Instead, an aggrieved party need only convince a willing judge to rewrite the statute under the name of equity. While such an approach might be extraordinarily efficient for a particular litigant, the amount of damage it causes to the separation of powers mandate of our Constitution and the overall structure of our government is immeasurable.

Devillers v Auto Club Ins. Ass'n, 473 Mich 562, 591; 702 NW2d 539 (2005).

Appellant-Plaintiff urges this Court to cast aside *two* clear and unambiguous statutes – the Revenue Bond Act and the 1939 Act – on the theory that these longtime statutes are inequitable as applied to an admittedly sophisticated real estate investment entity, i.e., Appellant-Plaintiff. Each of these statutes gave Appellant-Plaintiff a way to avoid the accrual of liens against its property by providing the appropriate notice to the City.[62] Appellant-Plaintiff urges the Court to ignore its failure to provide notice on the ground that the City supposedly knew that Appellant-Plaintiff intended to file the notice.

> When confronted with equities conflicting with clear statutory language, the *Alston* Court stated, *supra* at 461: "Courts of equity, however, as well as law, must apply legislative enactments in accordance with the plain intent and language used by the legislature." Where, as in the present case, a statute is applicable to the circumstances and dictates the requirements for relief by one party, equity will not interfere.

[62] MCL 123.165; MCL 141.121(3).

Senters v Ottawa Savings Bank, FSB, 443 Mich 45, 55-56; 503 NW2d 639 (1993), citing *G S Sanborn Co v Alston,* 153 Mich 456, 461; 116 NW 1099 (1908) (footnote omitted).

Appellant-Plaintiff next argues its vague estoppel theory.[63] But even Appellant-Plaintiff acknowledged that its equitable estoppel claim is premised on the City having misled Appellant-Plaintiff about the accrual of the liens.[64] And Appellant-Plaintiff is statutorily deemed to have known about the liens per MCL 123.164.

So there is no equity to estopping enforcement of the liens. Appellant-Plaintiff cannot use its alleged ignorance of knowledge legally imputed to Appellant-Plaintiff. Moreover,

> "Arguments based on equitable estoppel to avoid payment for public utility services received have been consistently rejected." *Sigal v Detroit,* 140 Mich App 39, 42; 362 NW2d 886 (1985).

Trahey v City of Inkster, __ Mich App __; __ NW2d __; 2015 Mich. App. LEXIS 1609, at 20.

Appellant-Plaintiff's final argument, then, is that it is somehow unjust for the City to have liens on Appellant-Plaintiff's property, on the ground that the City received the "substantial financial benefits that came with Awrey remaining in business."[65] This claim is ironic for a number of reasons, including the fact that Appellant-Plaintiff also benefited from retaining Awrey as a tenant. But the argument's bigger problem is the inequity it would impose on two classes of innocent third parties – bondholders and the system's other ratepayers.

The bondholders' sole security under the Revenue Bond Act is its lien on the revenues of the system. *Alan v Wayne County,* 388 Mich 210, 293; 200 NW2d (1972). So dissolving those liens reduces bondholder security.

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[63] *NL, supra,* at 23.

[64] Plaintiff's Brief at 16.

[65] Plaintiff's Brief at 20.

Equally at risk – should Appellant-Plaintiff's theory prevail – are the system's ratepayers. MCL 141.121(1) requires that water/sewer rates be sufficient to pay off bonds and all other expenses of the system. This is why free water/sewer service is forbidden by MCL 141.118 – the cost of that service would simply fall on other ratepayers. For this reason, equitable arguments to avoid payment for public utility services received have been consistently rejected. *Sigal, supra,* at 42. Otherwise, such arguments could lead to discrimination among customers. *Sigal, supra,* at 44-45. Or, as the Court of Appeals succinctly put it

> No one may avoid payment of a water bill merely because the city did not read the meter.

Sigal, supra, at 45.

> The majority of courts have held that their public-utility laws forbid the use of common-law defenses. [ ] They have concluded that the public policy of maintaining equality among consumers without preferential privileges "supercedes the ordinary doctrine of estoppel [or latches]".

Cincinnati Gas & Elec. v Joseph Chevrolet Co, 791 NE2d 1016, 1022; 153 Ohio App3d 95 (2003), citing *Sigal, supra,* among other cases.[66]

> As explained by one commentator, "The general utility rule provides that in instances of mistaken underbillling by a public utility, the erring company holds not only the right, but the obligation, to collect the underpayment. Neither the reason for the underbilling nor the impact on the customer will mitigate the effect on the operation of this rule. In refusing to rely on mistake and estoppel in the underbilling context, most courts reason that invoking equitable estoppel [or latches] against a public utility would violate the strong public policy against discriminatory rates. * * * Courts will not consider a utility's responsibility for an underbilling when determining whether the utility may collect an additional amount due from a customer. Neither negligence nor willful misrepresentation relieves the utility of the right or the responsibility to collect the rates established by the [ordinance].

[66] See *Cincinnati Gas & Elec.* at 1022, n. 14.

Cincinnati Gas & Elec., *supra*, 1022, quoting Colton, "Protecting against the Harms of the Mistaken Utility Undercharge" (1991), 39 Wash.U.J.Urb. & Contemp.L. 99, 103-105.

The upshot of *Trahey*, *Sigal*, and their ilk is that equity does not concern itself with the underbilled customer because it recognizes that by excusing the underbilled customer it would prejudice the other ratepayers. Neither whatever fault might be imputed to the City nor any innocence attributed to Appellant-Plaintiff is considered. The City has a duty, on behalf of all those other ratepayers, to collect through the statutorily provided security, i.e., the water/sewer liens on Appellant-Plaintiff's property.

And besides that, Appellant-Plaintiff did not receive any representations – nor did it provide any benefit to the City – via the Subordination Agreement, as the Court of Appeals observed. *NL*, *supra*, at 23-25. The Court of Appeals was right to dismiss Appellant-Plaintiff's equitable claims.

VI. THERE BEING NO REASON FOR THIS COURT TO GRANT LEAVE, THE COURT OF APPEALS DECISION SHOULD BE ALLOWED TO STAND WITHOUT FURTHER APPELLATE REVIEW.

As "cursory" as Appellant-Plaintiff was in the exposition of the tort and equitable claims in its Complaint, *NL*, *supra*, at 23, this sophisticated real estate investment entity's analysis of the standard for granting leave – Application at 15-16 – may be even more perfunctory. Appellant-Plaintiff nowhere cites MCR 7.305(B), which sets forth the grounds for granting an application for leave. As a result, the City and this Court must resort to conjecture to figure out why Appellant-Plaintiff believes leave should be granted.

It is, however, clear that MCR 7.305(B)(1), (4), and (6) do not apply. This case does not challenge the validity of a legislative act or involve a bypass of the Court of Appeals or an appeal from the Attorney Discipline Board. This leaves MCR 7.305(B)(2) (significant public interest),

(3) (legal principles of major significance to the State's jurisprudence), and (5) (clear error and material injustice or conflict with existing appellate decision(s)).

Appellant-Plaintiff does not appear to argue that there is significant public interest justifying a grant of leave. This case – however fascinating it may be to the lawyers – has not garnered media attention or other signs of public interest. The Detroit Water and Sewerage Department filed an *amicus* brief in the Court of Appeals, Application at 24, n. 6,[67] as did the Michigan Municipal League and Michigan Townships Association.[68] But those *amicus* briefs were filed in support of the City, so the *amici* have no interest in the grant of leave.

Appellant-Plaintiff may be arguing, at 15-16 of the Application, that the Court of Appeals decision in this case either conflicts with other decisions or sets up a battle over legal principles of major significance. Appellant-Plaintiff argues that the Court of Appeals "alter[ed]" the "definition of the word 'shall.'" Application at 15. But the cases Plaintiff-Appellant cites have nothing whatsoever to do with water/sewer liens or the 1939 Act or Revenue Bond Act, so they have only the most tangential imaginable connection to the instant case and do not even suggest a different result in this case.[69] So the alleged conflict is not easy to identify.

The same could be said for the "major legal principle" supposedly at stake. Appellant-Plaintiff is not forthcoming about the identity of the principle(s), either. Perhaps the principle has

[67] Exhibit G attached.

[68] Exhibit H attached.

[69] In fact, the Court of Appeals decision in the instant case comports with the only prior opinion addressing the issues in this case. That was the unpublished decision in *Saginaw Landlords Assn v City of Saginaw*, Unpublished opinion per curiam of the Court of Appeals, decided November 2, 2001 (Docket No. 222256); 2001 Mich App LEXIS 2413. Though *Saginaw Landlords* is unpublished, *Brown Bark I, LP v Traverse City Light & Power Dept*, 736 F Supp 2d 1099, at 1104, n.2 (WD Mich 2010), affd at 499 Fed Appx 467; 2012 U.S. App LEXIS 18898, acknowledged the unique authority of *Saginaw Landlords*. The published Court of Appeals decision in the instant case is, in effect, a re-release of *Saginaw Landlords* in published form.

to do with the definition of "shall," but Appellant-Plaintiff conducts this argument with a straw man. The Court of Appeals said "shall" is "mandatory," *NL*, *supra,* at 22. Nobody is arguing about that. The City "shall" timely place water arrearages on property tax bills, it is true. The City *did* place the arrearages on the tax bill,[70] but did not strictly hew to the timetable, and neither the ordinance nor the statutes directly address the consequences of such an occurrence. Appellant-Plaintiff seeks to write its own remedy to fill this gap.

On the other hand, the statutes provide that the liens "shall" not accrue after Appellant-Plaintiff files a tenant responsibility notice with the City. MCL 141.121(3), MCL 123.165. So the statutes make the consequence of a non-filing clear. The debate between the parties in this case, then, relates not to the definition of "shall" but the consequences of noncompliance or tardy compliance in varying statutory contexts – hardly a legal principle of major significance. It is small wonder Appellant-Plaintiff did not attempt to name a major principle at stake in the Application.

Perhaps the entire Application should be taken as an argument for the "clear error material injustice" prong of the test, but that does not help Appellant-Plaintiff.

The Court of Appeals opinion in this case is lengthy and a product of obvious care on the part of the panel, along with an evident desire to follow this Court's precedents. If it has a deficiency at all, it is that the opinion could have enumerated any number of additional fatal defects in the Complaint. Appellant-Plaintiff has not made a case for "clear error."

[70] Application at 10.

As for material injustice, an admittedly sophisticated real estate investment entity, having statutory notice[71] of water liens on its property, failed to pay off those liens or compel its tenant to do so. That entity also failed or refused to avail itself of the statutory remedy by which it could have avoided the liens. So the entity is struck with the liens. Where is the injustice in that? Would it be more just to shift the loss to the bondholders or other ratepayers? That is not what the statutes or applicable common law say.

There is no reason to grant the Application.

[71] And, one would assume, common sense notice. After all, the Court of Appeals decades ago repeated an attorney's warning that

> "You should make investigation to determine whether all of the water bills due against the premises are paid, because delinquent water bills constitute a lien against the premises regardless of the ownership of same."

Williams v American Title Ins Co., 83 Mich App 686, 692, n.2; 269 NW2d 481 (1978).

CONCLUSION

The City respectfully requests that this Honorable Court 1) deny in its entirety Appellant-Plaintiff's Application for Leave to Appeal, 2) affirm the decision of the Court of Appeals in all particulars, and 3) award the City its costs, including attorneys' fees, and such other relief as this Court deems just.

Respectfully submitted,

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Dated: February 25, 2016

CERTIFICIATE OF SERVICE

I hereby certify that on February 25, 2016, I electronically filed Appellee-Defendant's Brief in Opposition to Appellant-Plaintiff's Application for Leave to Appeal with the Clerk of the Michigan Supreme Court using the True Filing System, and same being electronically served upon Jason Conti at jconti@honigman.com, Counsel for the Appellant-Plaintiff, using the True Filing System.

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